The Weekly Reporter,

APPELLATE HIGH COURT

The 3rd January 1867.

Present:

The Hon'ble Sir Barnes Peacock, *Kt.*, *Chief Justice*, and the Hon'ble L. S. Jackson, *Judge.*

Estoppel—Hindoo Law of Inheritance—Decrees against Sisters.

Case No. 2123 of 1866.

Special Appeal from a decision passed by Mr. E. S. Pearson, Judge of Tirhoot, dated the 29th May 1866, affirming a decision passed by Syud Emdad Ali, Principal Sudder Ameen of that District, dated the 18th April 1865.

Joygobind Sohoy (Defendant), *Appellant*,

versus

Mahtab Koonwar (Plaintiff), *Respondent.*

Mr. R. E. Twidale for Appellant.

No one for Respondent.

The survivor of several Hindoo sisters is not bound by decrees obtained against her sisters during their lives whose interest was only a life-interest in their father's property which, on their death, passed to the survivor as heir of her father.

Peacock, C.J.—THE plaintiff in this case claims as heir of her father. She does not claim as heir of her sisters; and, although she and her sisters took the estate as heirs of the father, still her sisters had merely the right which a female takes by inheritance, namely, a right which continues only during her life. The sisters could not transmit the estate to their heirs, but the estate upon their death passed to the plaintiff as the heir of her father. Therefore, the plaintiff is not bound by the decrees which were obtained against the sisters during their lives.

The decree of the Lower Appellate Court is affirmed, but without costs, no one appearing for the respondents.

The 3rd January 1867.

Present:

The Hon'ble Sir Barnes Peacock, *Kt.*, *Chief Justice*, and the Hon'ble L. S. Jackson, *Judge.*

User.

Case No. 2189 of 1866.

Special Appeal from a decision passed by Mr. O. Toogood, Judge of Beerbhoom, dated the 4th June 1866, reversing a decision passed by Baboo Kedaressur Roy, Moonsiff of Gopalpore, dated the 23rd February 1866.

Mooktaram Bhuttacharjee (Plaintiff), *Appellant*,

versus

Hurro Chunder Roy and another (Defendants), *Respondents.*

Baboo Roopnath Bannerjee for Appellant.

No one for Respondents.

A user *all along* or *from before* does not necessarily prove a right. Its existence must be proved from a time from which the right would be gained or presumed to have been gained.

Peacock, C.J.—WE think that what the Judge means to say is that, looking at the evidence, it does not prove a right. He says "a prescriptive right," but he means a right which the plaintiff has acquired by usage. Then the question is, was it proved that he had got a right by usage? The 1st issue was whether the lands have been all along irrigated. But the expression "all along" is very indefinite. The Ameen, who was sent to make the local enquiry, says that the right was exercised *from before* which is equally indefinite. It does not show how long before. Probably, it means from before the occasion when the defendant admits it to have been exercised. A user *all along* or *from before* does not necessarily prove a

right. It must be proved to have existed from a time from which the right would be gained or presumed to have been gained. The Judge says that this has not been proved. We think that the Judge was right. It has not been shown that the right has been used from such a length of time as would cause a right, or from which such a right might be presumed.

The case does not come within the precedent cited (Sheikh Goburdhun *vs.* Sheikh Sadhoo, 1 Weekly Reporter, p. 244). We do not mean to say that we concur in that decision. If it were necessary for us to decide that point, we should probably have referred the question to a Full Bench. But, without expressing any opinion as to that decision, it appears to us that what the Judge in this case means to say is that, assuming the evidence to be true, the plaintiff has not proved a right to take the water out of the defendant's land.

The decision of the Lower Appellate Court is affirmed, but without costs, no one appearing for the respondent.

The 3rd January 1867.

Present:

The Hon'ble Sir Barnes Peacock, *Kt., Chief Justice*, and the Hon'ble L. S. Jackson, *Judge*.

Suit for kubooleut—Relation of landlord and tenant.

Case No. 2193 of 1866 under Act X. of 1859.

Special Appeal from a decision passed by Mr. E. W. Molony, Officiating Judge of Moorshedabad, dated the 31st May 1866, affirming a decision passed by Baboo Poorno Chunder Ghose, Deputy Collector of that District, dated the 26th February 1866.

Ramessur Audhikaree (Defendant), *Appellant*,

versus

Messrs. R. Watson & Co. (Plaintiffs), *Respondents*.

Baboo Kishen Dyal Roy for Appellant.

Mr. J. S. Rochfort and *Baboo Onookool Chunder Mookerjee* for Respondents.

In order to maintain a suit for a kubooleut, the plaintiff must show that the relation of landlord and tenant existed between him and the defendant.

Peacock, C.J.—In order to maintain his suit for a kubooleut, it was necessary for the plaintiff to show that the relation of landlord and tenant subsisted between him and the defendant. No such relationship has been proved. The plaintiffs may have a right (we cannot say whether they have or not) to the land, and the defendant may be a trespasser. It has been frequently determined by this Court that a mere trespasser cannot be sued for a kubooleut.

The decree of the Lower Appellate Court is reversed with costs, and a decree given for the defendants with costs in all the Courts.

The 3rd January 1867.

Present:

The Hon'ble Sir Barnes Peacock, *Kt., Chief Justice*, and the Hon'ble L. S. Jackson, *Judge*.

Section 13, Act X. of 1859—Notice of Enhancement—Decrees.

Case No. 2121 of 1866 under Act X. of 1859.

Special Appeal from a decision passed by Mr. G. G. Morris, Additional Judge of Jessore, dated the 31st May 1866, reversing a decision of Baboo Kisto Behary Mookerjee, Deputy Collector of Khoolna, dated the 27th November 1865.

Chunder Monee Dossee (Defendant), *Appellant*,

versus

Dhuroneedhur Lahory and others (Plaintiffs), *Respondents*.

Mr. J. S. Rochfort and *Baboo Nuleet Chunder Sein* for Appellant.

Baboo Bungshee Dhur Sein for Respondents.

According to Section 13, Act X. of 1859, a notice of enhancement must be served, not upon the under-tenant or ryot or his agent, but personally upon the under-tenant or ryot himself, in or before the month of Cheyt. If it cannot be so personally served, it must be affixed at his usual place of residence in the district in which the land is situated, or if he have no such place of residence, at the mâl kutcherry, &c.

The decrees of the Lower Courts should be explicit in their terms, as well as in accordance with their judgments.

Peacock, C.J.—The law (Section 13, Act X. of 1859) is very express. It says that no under-tenant or ryot shall be liable to pay any higher rent for the land held or cultivated by him than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot in or before the month of Cheyt. The Section goes on to say that the notice